

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

UMG RECORDINGS, INC., *et al.*,

Plaintiffs,

v.

KURBANOV, *et al.*,

Defendants.

Case No. 1:18-CV-00957-CMH-TCB

**DEFENDANT TOFIG KURBANOV'S DECLARATION IN SUPPORT OF
DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL
PRESERVATION AND PRODUCTION OF WEB SERVER DATA**

I, Tofig Kurbanov, declare and state as follows:

1. My name is Tofig Kurbanov. I am over the age of 18 years. I make this declaration based upon personal knowledge and my review of business records. All statements contained in this declaration are true and correct to the best of my knowledge. If called as a witness, I could and would testify as to the facts set forth in this declaration.

2. I operate the websites flvto.biz and 2conv.com (the "Websites"). I live in Rostov-on-Don, Russia and operate the Websites from Rostov-on-Don, Russia.

3. The Websites allow visitors to save the audio tracks from online videos to their computers without necessarily saving the video content as well. The functionality of the Websites is content neutral, and there are substantial non-infringing reasons why users would utilize the Websites.

4. The Websites are currently hosted with a company called Hetzner Online GmbH (hetzner.com). It is my understanding that Hetzner is a company organized and based in Germany, and that the servers hosting the Websites are physically located in Germany.

5. Only a small minority of the Websites' traffic comes from the United States. During the time period of October 1, 2017, through September 30, 2018, only 5.87% of the users of the 2conv.com Website were from the United States, and only 9.92% of the users from the flvto.biz Website were from the United States. Documentation and evidence supporting this assertion is contained paragraphs 34-36 and 38-39 of my declaration dated October 1, 2018 and filed with this Court as Docket No. 25-1.

6. The web server that hosts the Websites does not maintain logs of server activity such as an access log which saves the time, date, and IP address of each request made to the Websites (the "Access Logs"). I have not configured the server to create and save Access Logs, in part because doing so would require the use of significant hard drive space to store this information, which is an expense that I do not wish to incur. It is also my understanding and belief that saving such Access Logs would cause the Websites to run more slowly, which I do not want. I have not, at any time since starting the Websites, created or stored Access Logs.

7. The custom-made Website interface software does not store the URLs of the videos that users enter into the Websites to convert them to audio files. In order for the Website software to store each URL information entered into the Websites by users for conversion, I would have to have to program the Websites' software to store this information, which would involve significant costs.

8. Moreover, I would also incur additional expenses in respect to storing this newly recorded information. I believe that if the Websites saved every URL that users entered into the

Websites it would take up approximately 92.5 gigabytes of storage space each day which translates to about 2.7 terabytes of storage each month. This would result in thousands of dollars a year in storage charges. For example, according to Amazon Web Services (“AWS”) server charges, AWS would charge about \$4,500 for the first year of storage at this rate. As the storage would continue accumulating, the storage charges would increase by \$4,500 each year (to about \$9,000 for the second year and \$13,500 for the third year, *etc.*) assuming that usage rates of the Websites remained constant.

9. It is also my understanding and belief that saving such URL information would cause the Websites to run more slowly, which I do not want. I have not, at any time since starting the Websites, created or stored this URL information.

10. The Websites also do not store a copy of the audio file that is converted by use of the Websites (other than for a short period of time – generally only a matter of minutes so that the user may download the audio file). The Websites do not do this for two primary, but non-exclusive, reasons. First, while the Websites have many non-copyright infringing uses and the Websites’ terms of service explicitly prohibit infringing uses, the Websites could be used in the way where copyrights are violated (just as any recording device can be used). Therefore, if the Websites were to store copies of all audio files converted by the Websites, it is possible that the Websites would maintain a copy of copyright infringing material which could itself be a violation of copyright law – indeed, such a practice may be considered copyright infringement by the Websites *themselves*, which would expose me personally to liability. Second, as mentioned above, due to the large numbers of files converted through the website, storing each audio file would be prohibitively expensive and the storage fees would be astronomical. Since

audio files take up storage space orders of magnitude greater than that of the URLs, the storage fees in this situation would be many, many times greater than that of the URLs.

11. It is also my understanding and belief that saving these audio files would cause the Websites to run more slowly, which I do not want. I have not, at any time since starting the Websites, created or stored such audio files.

12. In addition, I also value the privacy of the Websites users. Keeping and storing Access Logs, storing the records of the URLs that were converted, or maintaining copies of audio files converted could jeopardize the privacy of the Websites users. In addition, storing such information – or providing it to third-parties such as the Plaintiffs could create a host of legal concerns and liabilities in the 200+ countries where the Websites are accessed (each of which has its own data privacy laws).

13. For example, it is my understanding that since the Websites are operated from Russia, the Russian authorities might have the right to seize and inspect the Websites' business records, which would include Access Logs, URL records, and/or audio files, if the Websites were to maintain them. I fear that if any of the Websites' users were to have downloaded what Russia considers to be dissident material, or material that the Russian government otherwise finds objectionable, that the Russian government could locate a Website user and possibly subject that user to an unfavorable and unfair criminal or civil proceeding.

14. Similarly, although the Websites retain the *right* to log information such as IP addresses it does not actually do so in part because doing so might violate the various data privacy laws of countries from which the users access the Websites. For example, the websites servers are located in Germany. It is my understanding that, under German law, a user's IP address is generally considered personal information which cannot be shared without the user's

permission and, even then, only if the user has specifically consented to the specific disclosures.

Although I do not know specifically, I imagine that the other 200+ countries from which the Websites are accessed each have their own rules about how such data is to be handled *if it is stored and maintained*. Trying to comply with the laws of each of those countries would be unrealistic, which is just another reason why I do not want to store such data.

15. I also believe that if users knew that information about their requests and usage of the Websites was logged and saved, and could possibly be accessed by governments, it could discourage users from using the Websites and decrease the popularity and profitability of the Websites.

[Signature Page Follows]

Signed under the pains and penalties of perjury this 23rd Day of June, 2021.



Tofiq Kurbanov